

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
SHIRLEY PAYNE,)	CASE NO. 00-63207 JPK
)	Chapter 7
Debtor.)	

GORDON E. GOUVEIA,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 04-6067
)	
SHIRLEY PAYNE,)	
)	
Defendant.)	

ORDER FOR HEARING

This adversary proceeding was initiated by a two-count complaint filed on April 8, 2004. The first count of the complaint seeks revocation of the debtor's/defendant's discharge based upon the debtor's failure to comply with an order entered by the Court on March 24, 2003. The second count of the complaint seeks a money judgment with respect to funds required by that order to be turned over to the Chapter 7 Trustee.

The order entered on April 18, 2002, granted the Trustee's motion for a turnover order and required the debtor to turnover the sum of \$3,055.00, representing the 1999 tax refund amount constituting property of the estate, to the Trustee. On March 21, 2003, the Trustee and the debtor entered into a Stipulation and Agreement which provided an installment payment arrangement by which the debtor would repay the amount of \$3,055.00 to the Trustee. A document was entered on the record as record entry #27 on March 24, 2003, which differs from the Stipulation and Agreement filed on March 21, 2003 by the inclusion of an "Endorsement Order" approved by the Honorable Kent Lindquist which in pertinent part states: "the Court having examined said Agreed Entry, and being duly advised, does hereby approve the same,

and it is so ORDERED, ADJUDGED AND DECREED.” It is this order upon which the request for revocation of the debtor’s discharge is premised. The first issue to be addressed is whether or not the March 24, 2003 entry, as approved by the Court, constitutes the type of order contemplated by 11 U.S.C. § 727(a)(6), or whether that order merely constituted the Court’s acknowledgment of its approval of an agreement entered into between the debtor and the Trustee.

An entry of default against the debtor was entered on June 3, 2004 in this adversary proceeding. On July 30, 2004, the plaintiff filed a Status Report which stated that the debtor had begun making payments pursuant to the parties’ installment payment agreement, and which further requested that the adversary proceeding remain pending and the default judgment not be entered. At a conference held on April 20, 2006, as recorded by docket entry #22, counsel for the plaintiff advised the Court that the plaintiff anticipated that the balance of the amount owed to the Chapter 7 estate would be paid in full pursuant to a plan implemented through the debtor’s Chapter 13 case, Case No. 05-65719. On June 21, 2005, the Court entered an Order on Application to Compromise and Settle Estate’s Interest in Debtor’s Tax Refund in Case No. 00-63207, which stated that the Chapter 7 estate would receive the amount of \$815.00 through the debtor’s Chapter 13 plan in 05-60639 at the rate of \$100.00 per month. This amount was contemplated to be paid to the Trustee as an administrative claim in the Chapter 13 case. An immaterial modification was approved on August 29, 2005 in the debtor’s Chapter 13 case in order to effect this arrangement. Subsequently, the debtor’s Chapter 13 plan was confirmed by order entered on September 14, 2005, and the debtor then filed the motion to dismiss the Chapter 13 case on September 20, 2005, which was granted by order entered on September 21, 2005. The Trustee’s final report filed on January 24, 2006 in Case No. 05-60639 states that no payment was made on the \$815.00 administrative claim granted to the Chapter 7 Trustee in that case.

The Motion for Judgment by Default filed by the Trustee/Plaintiff on November 8, 2006 requests judgment in the amount of \$1,630.00 on Count II of the complaint, and does not request any relief with respect to revocation of the debtor's discharge pursuant to Count I. Apart from the fact that Count I is left dangling, a question arises as to whether proceedings in the Chapter 13 effected an arrangement whereby the amount to be paid by the debtor to the Chapter 7 Trustee was \$815.00, rather than the amount originally owed by the debtor to the Chapter 7 estate.

IT IS ORDERED that a hearing will be held on **March 9, 2007, at 10:00 A.M.** to address the foregoing issues.

Dated at Hammond, Indiana on January 8, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Plaintiff
Debtor
Attorney Willie Harris
U.S. Trustee
Attorney Andrew Kopko